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SUPREME COURT  
OF THE STATE OF WASHINGTON

JAMES GORMAN IV, as General Partner of  
HOLLYWOOD VINEYARDS LIMITED  
PARTNERSHIP,

Respondent,

v.

CITY OF WOODINVILLE,

Petitioner.

CITY OF WOODINVILLE'S SUPPLEMENTAL BRIEF

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## A. INTRODUCTION

This case is about whether or not the Washington statute of limitations prohibiting a private party from asserting against the government any claim of right based upon the passage of time<sup>1</sup>, means what it says and is truly effective against claim of right based upon adverse possession asserted against the state and its local governments<sup>2</sup>. The Court of Appeals by reversing the decision of the Superior Court to dismiss the claim of title being asserted by Gorman against the City, has diluted the legislative intent expressed in the words of the statute, and rendered the statute less effective in accomplishing the statutes public purposes. The Court of Appeals filed its published opinion on March 21, 2011. *Gorman v. Woodinville*, ---P.3d---, 2011 W2989415, Wn. App. Div.1, March 21, 2011 (NO. 63053-9-1) (hereinafter "Court of Appeals Decision"). The Court of Appeals' Decision (slip opinion) is in Appendix A attached to this pleading.

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<sup>1</sup> RCW 4.16.160.

<sup>2</sup> Local Governments holding record title to property used for governmental purposes such as right-of-way come within the coverage of RCW 4.16.160. *Sisson v. Koelle*, 10 Wn. App. 746, 520 P.2d 1380 (1974); *Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co.*, 61 Wn.2d 509, 512-13, 379 P.2d 178 (1963); and *Town of West Seattle v. West Seattle Land & Improvement Co.*, 38 Wash. 359, 363-64, 80 P. 549 (1905).

{GAR919687.DOC;I\00046.050034\ }

The legislative intent expressed in the language of RCW 4.16.160 is that the state or a local government once having acquired record title to real property and dedicated the property to a public use should not be exposed to a private parties subsequent claim of right to the property predicated upon the passage of time, period. The distinction recognized by the Court of Appeals between a claim of right based upon the passage of time prior to government acquisition and a claim of right based upon the passage of time after acquisition is neither expressed or implied in the language of the statute. Once a conveyance by a private landowner to the state or a local government has taken place, and the local government has acquired the interest of the private landowner, any legal action brought by a third party claiming title by adverse possession, as here, will be brought against the government, not the former landowner. Even though the third party may claim that their ownership by adverse possession was acquired prior to government acquisition, the claim is being asserted against the current holder of record title, which in this case is the City, not a private landowner.

If as recognized by the Court of Appeals, the government immunity provided by RCW 4.16.160 from the other statutes of limitation exists to protect the public from suffering for any negligence of its

representatives, that protection applies equally to any negligence in failing to recognize a potential adverse possession claim prior to acquisition as it does to any negligence in vigilance in others use of the property after acquisition. Likewise, if this government immunity is intended to protect the public from the costs of legal fees, awards, and other adverse consequences that accompany lawsuits against the government, the policy behind the statute extends to such lawsuits based upon the passage of time prior to government acquisition as it does to lawsuits based upon the passage of time following government acquisition. The distinction between the passage of time before and after acquisition should be recognized by this court as a distinction without a difference in the context of the immunity provided governments by RCW 4.16.160.

This court should reverse the Court of Appeals and reinstate the decision of the Superior Court in order to restore full viability of the immunity statute and reject the notion that the government is not protected from a claim of adverse possession made in a lawsuit naming the state or a local government as a defendant, simply because the passage of time required by the statutes of limitation occurred prior to government acquisition of the property.

**B. STATEMENT OF THE CASE**

The relevant factual and procedural history of this case is set forth in the Court of Appeals decision. This case arises out of a quiet title action commenced by Respondent ("Gorman") subsequent to the dedication of the property at issue (Tract Y) to the City for a road improvement project. Gorman is the record owner of neighboring property. The City is the single named defendant. In his Complaint, Gorman admits the interest of the City in the subject property and asserts that "*the City may claim, pursuant to a dedication from a third party that occurred in December 2005, an interest in property adjacent to Plaintiff's Property, ... described as ... "Tract Y."*"<sup>3</sup> Gorman further asserted that he, as plaintiff, together with his tenants, employees, and customers, "*since approximately 1984, and in any event for well over ten years, have exclusively used Tract Y for vehicle parking and for purposes related thereto.*"<sup>4</sup> Gorman asked the court to quiet title to Tract Y in his favor and to extinguish any claim of title made by the City. CP 8. Gorman's Superior Court Complaint is attached as Appendix B to this pleading.

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<sup>3</sup> (Emphasis added.)

<sup>4</sup> (Emphasis added.)

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The trial court granted the City's CR 12(b)(6) motion to dismiss Gorman's claim agreeing with the City that Gorman's claim was barred by RCW 4.16.160, which provides that:

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, **and no claim of right predicated upon the lapse of time shall ever be asserted against the state:** AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute. (Bold emphasis added.)

Gorman appealed the adverse decision. The Court of Appeals agreed with the argument that because Gorman contends the 10-year statute of limitations ran while the property was in private hands his quiet title action is not barred by RCW 4.16.160.

C. ARGUMENT

1. It is the City that needs protection from Gorman's claim of right by adverse possession, not the former private landowner.

The dedication of property by a private land owner to the City conveyed to the City whatever present interest the dedicator has to convey. A dedication is like a quit claim deed. "Every quitclaim deed conveys to the grantee whatever present interest the grantor has. *Brenner v. The J.J. Brenner Oyster Co.*, 48 Wn.2d 264, 292 P.2d 1052 (1956). When Gorman brought his quiet title action he brought it solely against the City. He asserted his claim of right solely against the City. The former private landowner had no property interest to lose or to protect. The City as defendant and record title owner needed and sought the protection afforded the state and local governments by RCW 4.16.160, not the former private landowner.

The Court of Appeals erred in determining that Gorman's claim was not barred by statute because, "[T]he statute does not protect private landowners, even if they later sell to the government." The City and not the former private landowner needs protection from Gorman's claim.

2. Gorman's claim of adverse possession is being asserted against the City and not the former private landowner.

regardless of the nature of the proof he intends to offer in support of his claim.

The plain unambiguous language of RCW 4.16.160 prohibits any claim of right to property at issue from being *asserted against* the City. If the City is the only defendant and bears the burden of defending its title to the property, the claim of right being asserted by Gorman is being *asserted against* the City, not the former private landowner. In lawsuits, claims are asserted against parties, not non-parties to the lawsuit. According to Black's Law Dictionary, Sixth Edition, at 61:

**Against.** Adverse to; contrary. *In re Dean's Estate*, 350 Mo. 494, 166 S.W.2d 529, 533. Signifies discord or conflict; opposed to; without the consent of; in conflict with. Sometimes meaning "upon," which is almost, if not altogether, synonymous with the word "on." *Northern Pac. Ry. Co. v. Gas Development Co.*, 103 Mont. 214, 62 P.2d 204, 205.

Gorman's claim is made adverse to the record title of the City and made only on or against the City as the only named defendant. Having no interest in Tract Y, Gorman's claim of right cannot now be asserted against the prior private landowner as reasoned by the Court of Appeals.

The legislative intent as derived from the plain language of the statute is that claims predicated upon lapse of time may not be asserted

against the government, period. That the lapse of time occurred before or after acquisition of record title by the City is only part of the proof of Gorman's claim, it does not differentiate or determine who the claim is being *asserted against*, as that term is used in RCW 4.16.160.

3. The conclusion drawn by the Court of Appeals that Gorman's quiet title action is predicated not upon a lapse of time but upon proof of vested title is convoluted and not well taken.

The Court of Appeals at pages 5-6 of its slip opinion, states the following:

Further, Gorman's quiet title action is predicated not upon a lapse of time but upon proof of vested title. The fact that, at trial, he would need to prove the elements of adverse possession, including passage of the statute of limitations against the former owner does not mean his quiet title action is predicated upon the lapse of time as to the City.

The statute as discussed above prohibits claims of right when predicated upon the passage of time from being asserted against the City. Whether the lapse of time is "as to the City" or to anyone else is immaterial. The running of a statute of limitations is essential to a claim of title based upon adverse possession. See 17 WILLIAM B. STOEBUCK, JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.1, at 505 (2nd ed. 2004 & Supp. 2010):

{GAR919687.DOC;1\00046.050034\}

To think about adverse possession, one needs to think first of its two principal aspects or divisions. First, there must be a statute of limitations on actions to recover land. . . .

Gorman's claim of vested title is based upon the lapse of time. A lapse of time is essential to a claim of adverse possession. A claimant's ability to assert title by adverse possession must arise out of one of the applicable statutes of limitations. Here the applicable statute is RCW 4.16.020. the passage of time is a clear element of any assertion of title claiming adverse possession. The passage of time prior to City ownership is the predicate for Gorman's claim of title and should be barred by RCW 4.16.160. The analysis by the Court of Appeals is convoluted and in disregard of the plain language of the statute.

4. The purposes and policy behind RCW 4.16.160 are served where the land is in public ownership and use at the time a claim of title to the land is asserted against the government in an action to quiet title.

At page 5 of the slip opinion (Appendix A), the Court of Appeals mistakenly concludes that "[P]ermittting Gorman's claim implicates none of the policies underlying the statute." The Court of Appeals recognized two policies behind the statute. First, the statute protects the public from the suffering for the negligence of its representatives, and allows the state to allocate its resources to use other than vigilance about inchoate claims.

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*Bellevue Sch. Dist. v. Brazier Constr. Co.*, 103 Wn.2d 111, 114, 691 P.2d 178 (1984). Here, it is implicit in Gorman's pleading, that the City accepted a dedication of property without recognizing that he had an inchoate claim against the private landowner that had vested him with title over the lapse of time. Protection from the public suffering arising from any failure of the City to allocate the resources to be vigilant of Gorman's yet unasserted claim of right is consistent with and with the policy behind the statute recognized by this Court in *Bellevue Sch. Dist. v. Brazier Constr. Co.*, *supra*.

The second policy behind the statute recognized by the Court of Appeals is that the statute was intended to *protect the public from legal fees, awards, and insurance coverage that accompany lawsuits against the government*. Gorman's lawsuit against the City subjects the public to payment attorney fees in defense of the lawsuit and possible attorney fees and an award of just compensation in the event he prevails in quieting title. Permitting Gorman's claim to go forward implicates both of the policies identified by the Court of Appeals as underlying the statute.

The Court of Appeals was mistaken in concluding that the purposes behind the statute are served only when the land is in public ownership at the time the claim of adverse possession first arises. The

purposes are also served when the land is in public ownership and use at the time the claim of right to the property by adverse possession is asserted against the state or local government holding record title.

The facts of this case demonstrate the public purposes served by application of RCW 4.16.160 to a claim of title by adverse possession, outside the record chain of title, allegedly vested prior to government acquisition of the subject property. Here Tract Y was dedicated to the City as part of a binding site plan approval for a large development. The property was dedicated for a public road improvement project necessary to accommodate the traffic that would be coming and going to the proposed development. The dedication was in the public interest and part of a government land use approval process. Allowing Gorman to hold his silence regarding his claim during the public process and to assert his claim against the City after the approvals requiring the dedication are not in the public interest. If dedication of title to local governments satisfying a condition of subdivision or other development permit approval is subject to upset by claim of adverse possession first asserted months or years following project permit approvals, the public interest will be subverted. Requiring the potential claimant to bring their claim prior to government acquisition of a property is not contrary to the principle of adverse

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possession but consistent with the legislative intent to bar such claims from harming the public interests.

5. Even if Gorman had valid title based upon adverse possession before the dedication of the property to the City, he cannot now displace the City as record title owner via a quiet title action against the City.

Although conceptually Gorman acquired vested title if he satisfied all the requirements of adverse possession, RCW 4.16.160 bars his proceeding with a quiet title action against the City asserting his claim of vested title.

Washington's statute protecting governments from claims of ownership of government-held property from persons claiming superior title arising out of Washington's ten-year statute of limitations in RCW 4.16.020 was adopted in 1903.<sup>5</sup> Thus, for many years, it has been commonly known that claims of adverse possession of property may not be made against the State or local governments acquiring title when acting in their governmental capacity. The particular language of RCW 4.16.160 at issue is as follows:

...the limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi municipality of

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<sup>5</sup> The 1903 legislation is included in Appendix C to this pleading.  
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the state in the same manner as to actions brought by private parties: *Provided*, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state. . . .

No doubt the 1903 amendment has discouraged the assertion of claims of right predicated upon the passage of time and adverse possession after a government has acquired title. Under the plain language of RCW 4.16.160, a claimant is barred from litigating and proving his or her claim of title was acquired by his or her adverse possession of property for a ten or seven-year period of time before record title was acquired by the government. The fact that the period of claimed adverse possession is prior to the dedication of the property to the City by the prior record property owner is irrelevant as the statutory language makes no distinction between the time before and after acquisition by the government. There is no exception for claims predicated on the passage of time prior to the acquisition of title by government.

Significantly, the statutory bar is not limited to a claim of adverse possession being asserted against the state, but rather the statute prohibits any claim of right predicated upon the lapse of time from being asserted against the state. Had the statute's language specifically prohibited suits

against the state based upon the adverse possession of state-held property, the Court of Appeals would have been correct in its interpretation of the statute, but the statutory prohibition is not so limited. The Washington legislature chose much broader language prohibiting, without qualification, all claims of right against the state predicated on the passage of time.

RCW 4.16.160 does not change the law of adverse possession, it simply prevents someone like Gorman from asserting their claim after government acquisition. The City's position is consistent with the law of adverse possession in Washington State. Gorman is simply barred from pursuing his claim of adverse possession against the City after Tract Y's dedication to the City.

Gorman could have asserted his claim against the prior private landowner prior to the dedication, but he didn't. He could have challenged the approval of the binding site plan with the dedication prohibiting the City from accepting the binding site plan until the adverse possession claim was decided between Gorman and the private landowner, but didn't. *Halverson v. City of Bellevue*, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985).

6. City's interpretation of RCW 4.16.160 is consistent with traditional principles of adverse possession.

The Court of Appeals' conclusion that the City's interpretation of RCW 4.16.160 disregards traditional principles of adverse possession<sup>6</sup> is mistaken. The principles referenced by the appeals court are cited out of context. None of the cases cited by the Court of Appeals in footnotes 10 through 13 of its decision involve a claim of adverse possession against a City or other government.<sup>7</sup> In the cases cited by the Court of Appeals in its decision, no claim of title by the passage of time and adverse possession was asserted against a government. It is also a traditional principle of adverse possession that a claim of title by adverse possession cannot be asserted against a government even if the claimant claims satisfaction of the passage of time and all other elements of adverse possession. *Commercial Waterway Dist. No. 1 of King County*, 61 Wn.2d at 512-13 (title by adverse possession cannot be acquired to property of the state or to property held by a municipality or quasi-municipality for public purposes in its governmental capacity); *Town of West Seattle*, 38 Wash. at 363-64; *Simonson v. Veit*, 37 Wn. App. 761, 683 P.2d 611 (1984), review

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<sup>6</sup> Slip Opinion at 3-4.

<sup>7</sup> The Appeals Court cites to *Mugass v. Smith*, 22 Wn.2d 429, 431, 206 P.2d (1949); *Schall v. Williams Valley R. Co.*, 35 Pa. 191, 204, 11 Casey 191 (1860); *Bowden-Gazzam Co. v. Hogan*, 22 Wn.2d 27, 39, 154 P.2d 285 (1944); *Wheeler v. Stone*, 1 Cush. 313, 55 Mass. 313 (1848); *Halverson v. Bellevue*, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985). {GAR919687.DOC;1\00046.050034\}

*denied*, 102 Wn.2d 1013 (where property owners were contract purchasers from state and did not receive deed for lot until entire purchase price had been paid, adjoining property owner did not satisfy ten-year period for prescriptive easement to alley on property owners' land inasmuch as title remained in state until deed was issued and adverse possession could not be asserted against state); *State v. Scott*, 89 Wash. 63, 76, 154 P. 165 (1916) (“[I]t is elementary that adverse possession cannot be made the basis of title as against a sovereign state.”).

In all of the cases cited by the Court of Appeals, all or part of the time of the claimed adverse possession was alleged to have run after title was conveyed to the government. All claims were unsuccessful. However, since in none of these cases is all of the passage of time alleged to have occurred prior to government ownership, the question as to whether the adverse possession claim could be asserted against the government if all the claimed period of adverse possession was prior to the acquisition of title by the government has remained unaddressed by the courts. There is no reported case law in Washington on this issue despite the existence of the subject language in the statute since 1903. Thus, this is an issue of first impression for the appellate courts of Washington and a decision that should be made by the Supreme Court.

In the only reported Washington case in which a claimant asserted that because his claimed easement was acquired by prescription prior to government acquisition of the property in question he was not barred from asserting his claim, the Court of Appeals Division III did not address the issue. *City of Benton City v. Adrian*, 50 Wn. App. 330, 336, 748 P.2d 679 (1988). The case was decided on other grounds, and the court did not comment one way or the other on the issue.

The protection provided state and local governments by RCW 4.16.160, as well as the protection given public funds and the certainty of dedications and other conveyances of land given to local governments by private property owners seeking development approvals, is significant and in the public interest. How is a local government to protect itself from the claim of adverse possession being made by a third party after the fact of a development approval requiring the dedication of land for roads and other public facilities, and thousands and even millions of dollars are already invested in the development? Local governments will have to require greater security at greater cost to the applicants for development approvals. The decision by the Court of Appeals is against the public interest and the policy behind the statute.

**D. CONCLUSION**

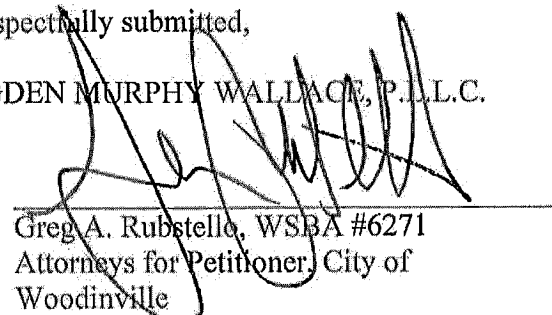
The decision of the Court of Appeals should be reversed and the decision of the trial court reinstated.

RESPECTFULLY SUBMITTED this 7th day of September, 2011.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By



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Woodinville

APPENDIX A

COURT OF APPEALS DECISION

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

JAMES GORMAN IV, as General Partner of )  
HOLLYWOOD VINEYARDS LIMITED )  
PARTNERSHIP, )

Appellant, )

v. )

CITY OF WOODINVILLE, )

Respondent. )

No. 63053-9-1

PUBLISHED OPINION

FILED: March 21, 2011

ELLINGTON, J. — The government is protected by statute against claims of adverse possession. The statute does not protect private landowners, even if they later sell to the government. Here, James Gorman claims he acquired ownership by adverse possession before the government purchased the land. If so, his claim is not barred. We reverse and remand for determination of the validity of his claim of title by adverse possession to property recently acquired by the City of Woodinville.

BACKGROUND

The City of Woodinville (City) acquired record title to Tract Y for a road improvement project. James Gorman IV, as General Partner of Hollywood Vineyards Limited Partnership (Gorman), filed an action to quiet title to Tract Y, alleging he had acquired vested title by adverse possession before the land was conveyed to the City.

The City moved to dismiss under CR 12(b)(6), arguing Gorman's claim was barred by RCW 4.16.160, which provides that "no claim of right *predicated upon the lapse of time* shall ever be asserted against the state."<sup>1</sup> The City asserted Gorman's claim was predicated upon a lapse of time and therefore barred. The trial court agreed and dismissed.

Gorman contends the 10-year statute of limitations ran while the property was in private hands and his quiet title action is not barred by RCW 4.16.160. We agree and reverse.

#### DISCUSSION

Dismissal under CR 12(b)(6) is appropriate only if the complaint alleges no facts that would justify recovery.<sup>2</sup> The plaintiff's allegations and any reasonable inferences are accepted as true.<sup>3</sup> Our review is de novo.<sup>4</sup>

The doctrine of adverse possession permits acquisition of legal title to private land without the owner's consent where the claimant possesses the property for at least 10 consecutive years and can prove the other requirements of the doctrine.<sup>5</sup> Adverse possession is thus partly dependent upon the passage of a statute of limitations. Under

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<sup>1</sup> (Emphasis added.)

<sup>2</sup> Reid v. Pierce Cnty., 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998); Orwick v. City of Seattle, 103 Wn.2d 249, 254, 692 P.2d 793 (1984).

<sup>3</sup> Reid, 136 Wn.2d at 201.

<sup>4</sup> Id.

<sup>5</sup> RCW 4.16.020. Successful adverse possession in Washington requires 10 years of possession that is (1) actual; (2) open and notorious; (3) hostile; (4) continuous; and (5) exclusive. ITT Rayonier, Inc. v. Bell, 112 Wn.2d 754, 757, 774 P.2d 6 (1989).

RCW 4.16.160, claims predicated upon lapse of time may not be asserted against the government, so adverse possession does not run against the government.<sup>6</sup>

The question here is whether vested title acquired by adverse possession against a *private* owner can be asserted after the record owner attempts to convey the property to the government.

The City asserts such claims are unambiguously prohibited by the statute because they are predicated upon lapse of time.<sup>7</sup> The City points to Commercial Waterway District No. 1 v. Permanente Cement Company,<sup>8</sup> where the plaintiff claimed to have adversely possessed property while the water district owned it. Not surprisingly, the court rejected the claim, holding that cities, acting in a governmental capacity, are exempt from the 10-year statute of limitations for adverse possession.<sup>9</sup> But this holding is not germane to the question here because unlike the waterway district, the City did not own the property when Gorman's title allegedly vested.

The City's interpretation of the statute disregards traditional principles of adverse possession. Title acquired by an adverse possessor, although not recorded, is valid

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<sup>6</sup> Edmonds v. Williams, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989) (citing Commercial Waterway Dist. No. 1 of King Cnty. v. Permanente Cement Co., 61 Wn.2d 509, 512, 379 P.2d 178 (1963)).

<sup>7</sup> Municipalities acting in a governmental capacity constitute "the state" under RCW 4.16.160. Commercial Waterway, 61 Wn.2d at 512. The City is a Washington municipal corporation.

<sup>8</sup> 61 Wn.2d 509, 510-11, 379 P.2d 178 (1963).

<sup>9</sup> Id. at 512-13; see also Town of West Seattle v. West Seattle Land & Improvement Co., 38 Wash. 359, 363-64, 80 P. 549 (1905) (party could not adversely possess public roadway).

and enforceable.<sup>10</sup> Once an adverse possessor has fulfilled the conditions of the doctrine, title to the property vests in his favor.<sup>11</sup> The adverse possessor need not record or sue to preserve his rights in the land.<sup>12</sup> Rather, the law is clear that title is acquired upon passage of the 10-year period.<sup>13</sup>

The City contends these rules apply only to private parties. But the underlying claim here involved only private parties.

The City also points out that no case has addressed precisely these facts. But no case has abandoned settled analysis in similar circumstances. For example, City of Benton City v. Adrian involved a claim of a prescriptive easement for drainage onto city property, an easement that cannot be acquired if the property is held by a municipal corporation in its governmental capacity.<sup>14</sup> Adrian contended, however, that the claimed easement was perfected before the city acquired the property. The court held Adrian had failed to prove the elements of adverse possession against the previous owner.<sup>15</sup> The court gave no indication that, if established by the evidence, such a claim might be

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<sup>10</sup> Mugaas v. Smith, 33 Wn.2d 429, 431, 206 P.2d 332 (1949). To rule otherwise, the court said, would be to require an adverse possessor to "keep his flag flying for ever [sic], and the statute [would] cease[] to be a statute of *limitations*." Id. at 433 (quoting Schall v. Williams Valley R. Co., 35 Pa. 191, 204, 11 Casey 191 (1860)).

<sup>11</sup> Bowden-Gazzam Co. v. Hogan, 22 Wn.2d 27, 39, 154 P.2d 285 (1944) (quoting Wheeler v. Stone, 1 Cush. 313, 55 Mass. 313 (1848)).

<sup>12</sup> Halverson v. City of Bellevue, 41 Wn. App. 457, 460, 704 P.2d 1232 (1985).

<sup>13</sup> Id. ("The law is clear that title is acquired by adverse possession upon passage of the 10-year period. The quiet title action merely confirmed that title to the land had passed to Halverson by 1974." (citations omitted)).

<sup>14</sup> 50 Wn. App. 330, 336, 748 P.2d 679 (1988) (citing Commercial Waterway, 61 Wn.2d at 512).

<sup>15</sup> Id. at 337.

barred.

In short, Washington cases support Gorman's claim, and the City offers no persuasive reason their principles should not apply.

The City also contends that the policy behind RCW 4.16.160 supports a bar against claims like Gorman's. We disagree.

Government immunity from statutes of limitation protects the public from suffering for the negligence of its representatives, and allows the state to allocate its resources to uses other than vigilance about inchoate claims.<sup>16</sup> It also protects the public from the costs of legal fees, awards, and insurance coverage that accompany lawsuits against the government.<sup>17</sup> These purposes are served only where the land is in public ownership at the time the claim arises. Permitting Gorman's claim implicates none of the policies underlying the statute.

Further, Gorman's quiet title action is predicated not upon a lapse of time but upon proof of vested title. The fact that, at trial, he would need to prove the elements of adverse possession, including passage of the statute of limitations against the former owner, does not mean his quiet title action is predicated upon the lapse of time as to the City.

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<sup>16</sup> Bellevue Sch. Dist. v. Brazier Constr. Co., 103 Wn.2d 111, 114, 691 P.2d 178 (1984) (quoting United States v. Thompson, 98 U.S. 486, 489-90, 8 Otto 486, 25 L. Ed. 194 (1878)); see also Guaranty Trust Co. of New York v. United States, 304 U.S. 126, 141, 58 S. Ct. 785, 82 L. Ed. 1224 (1938); 17 WILLIAM B. STOEBUCK, JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 8.1, at 515 (2d ed. 2004 & Supp. 2010).

<sup>17</sup> See LAWS OF 1986, ch. 305, § 100 (preamble); Bellevue Sch. Dist. v. Brazier Constr. Co., 100 Wn.2d 776, 783, 691 P.2d 178 (1984).

No. 63053-9-I/6

If Gorman had valid title before the City purchased the property, we think he has it still. We reverse and remand for trial.<sup>18</sup>

WE CONCUR:

Appelwick, J.

Engel, J.

Cox, J.

---

<sup>18</sup> Given our disposition, we need not reach the arguments concerning fees and costs except to point out that deposition costs are awardable only insofar as the depositions are used at trial. Klewitt-Grice v. State, 77 Wn. App. 867, 874, 895 P.2d 6 (1995) (fees for deposition transcripts not used at trial not awardable under RCW 4.84.010); Platts v. Arney, 46 Wn.2d 122, 128-29, 278 P.2d 657 (1955) (fees for depositions taken for discovery but not used at trial not awardable under RCW 4.48.090). The City's argument that Klewitt-Grice does not apply here because the City's cost award did not include transcription fees is unpersuasive.

APPENDIX B

GORMAN'S SUPERIOR COURT COMPLAINT

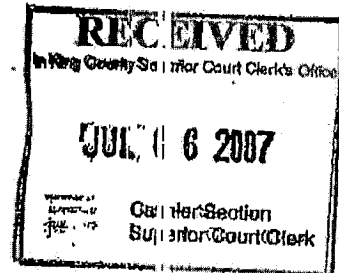
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MICHAEL C. HAYDEN

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JUL 10 2007

City of Woodinville

*James Hayden, City Clerk*

## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JAMES GORMAN IV, as General Partner of  
HOLLYWOOD VINEYARDS LIMITED  
PARTNERSHIP

Plaintiff,

v.

CITY OF WOODINVILLE,

Defendant.

02-2-22368-1 SEA

COMPLAINT to QUIET TITLE  
(Adverse Possession)

## 1. IDENTIFICATION OF PARTIES/JURISDICTION.

1.1 The plaintiff claims an interest in the real property located in King County which is the subject of this action. The plaintiff has paid all fees and costs due and owing the State of Washington.

1.2 The defendant City of Woodinville (the "City") is a subdivision of the State of Washington. The City may claim an interest in the parcel in King County, WA, that is the subject of this action.

## 2. PROPERTY

2.1 The plaintiff is the owner of the commercial property in King County, WA, legally described on Ex. No. 1 (the "Plaintiff's Property"). The Plaintiff's Property has been improved, since approximately 1984, with a retail building occupied by a number of tenants.

2.2 The City may claim, pursuant to a dedication from a third party that occurred in

COMPLAINT TO QUIET TITLE  
AND EJECTMENT - Page 1  
Daryl/Hollywood/p-Complaint.dad

COPY

RODGERS DEUTSCH & TURNER, P.L.L.C.  
ATTORNEYS AT LAW  
THREE LAKE BILLEVUE DRIVE  
SUITE 100  
BELLEVUE, WASHINGTON 98005-2440  
(425) 415-1110  
Fax: (425) 455-1626

1 December 2005, an interest in the property adjacent to Plaintiff's Property, and legally described as  
2 follows:

3 Tract Y of Woodinville Village Binding Site Plan recorded under  
4 Recording No. 20051222002236.

5 Hereafter "Tract Y".

6 **3. ADVERSE POSSESSION**

7 3.1 The plaintiff, and plaintiff's tenants, employees, customers and invitees, since  
8 approximately 1984, and in any event for well over ten years, have exclusively used Tract Y for  
9 vehicle parking and for purposes related thereto.

10 3.2 Plaintiff, based upon the facts set forth in Section 3.1 above, has adversely possessed  
11 Tract Y.

12 WHEREFORE, the plaintiff requests the following relief:

13 1. That title to Tract Y be quieted in favor of plaintiff, and that all claims of the defendants,  
14 and any person or party claiming by or through them, be forever extinguished.

15 2. For such other and further relief as this court deems just and equitable.

16  
17 DATED this \_\_\_\_ day of \_\_\_\_, 2007.

18 RODGERS DEUTSCH & TURNER, PLLC

19  
20  
21 Daryl A. Deutsch, WSBA #11003  
22 Attorney for Plaintiff  
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24  
25  
26  
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28

**EXHIBIT NO. 1****Property Owned by Hollywood Vineyards Limited Partnership**

That portion of Tract 37 of Hollywood Acres, as per plat recorded in Volume 29 of plats, page 23, records of King County, described as follows:

Beginning at the most Northerly corner of said tract;

Thence South 01°25'07" West, along the West line thereof, 490.00 feet;

Thence South 88°34'53" East, 175.00 feet;

Thence North 01°25'07" East, parallel with the West line of said tract, to intersect the Northeasterly line of said tract;

Thence Northwesterly, along said Northeasterly line to the point of beginning;

Situate in the City of Woodinville, County of King, State of Washington.

APPENDIX C  
1903 LEGISLATION

## CHAPTER 24. ✓

[S. B. No. 56.]

## 740-102 RELATING TO DEFENCE OF STATUTE OF LIMITATIONS.

AN ACT relating to the defence of the statute of limitations in actions brought by or for the benefit of the State or any of its municipalities, amending section 35 of the Code of Civil Procedure of Washington, of 1881, the same being section 4807 of Ballinger's Annotated Codes and Statutes of Washington, and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Section 35 of the code of civil procedure of Washington, 1881, the same being section 4807 of Ballinger's Annotated Codes and Statutes of Washington, shall be amended to read as follows: Section 35 (section 4807). The limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or *quasi* municipality of the state, in the same manner as to actions brought by private parties: *Provided*, That there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: *And further provided*, That no previously existing statute of limitation shall be interposed as a defense to any action brought in the name of or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to the adoption of this act, nor shall any cause of action against the state be predicated upon such a statute. An action shall be deemed commenced when the complaint is filed.

SEC. 2. An emergency exists and this act shall take effect immediately.

Passed the Senate January 29, 1903.

Passed the House February 18, 1903.

Approved by the Governor February 27, 1903.